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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,093	09/28/2001	Kirk D. Brannock	042390.P11898	6662
7590	01/12/2007	R. Alan Burnett BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP Seventh Floor 12400 Wilshire Boulevard Los Angeles, CA 90025-1026	EXAMINER VO, TED T	ART UNIT 2191 PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	01/12/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/967,093	BRANNOCK ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Ted T. Vo	2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 September 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5 and 8-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 9-17 and 21-29 is/are allowed.
- 6) Claim(s) 1-5,8 and 18-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/30/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. This action is in response to the amendment filed on 09/29/2006.

Claims 1-5, 8-29 are pending in the application.

***Response to Amendment***

2. Applicants' amendment and arguments have been fully considered.

It should be noted that update firmware by writing the new firmware into a location that is different from the location of the original firmware is not new. By the definition, when booting a computer, it must take the addresses of valid firmware. Therefore, a broadly statement as configuring to indicate whether the existing firmware data or the updated firmware data is valid and is to be loaded and executed" is not new.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 1-5, 8, 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Bramley, Jr., US Pat. No. 6,889,340 B1.

Given the broadest reasonable interpretation of followed claims in light of the specification.

As per Claim 1: Bramley discloses a flash memory that stores old firmware diagnostic drivers (original firmware). Bramley writes new firmware diagnostic drivers in an unused space of the memory that is different from the location of old firmware diagnostic drivers.

*A method for updating an existing portion of platform firmware data in persistent firmware memory, comprising:*

*writing updated firmware data to a memory location in the persistent firmware memory that is different from a memory location of the existing platform firmware data so that the persistent firmware memory comprises both the existing platform firmware data and the updated platform data (See col.2: 20-39: copying a new file to the diagnostic drive – See the different location 16 and 16a in Figure 1); and*

*performing an atomic operation to modify firmware configuration data (See col. 3: 5 to col. 4:5) to indicate whether the existing platform firmware data or the updated platform firmware data is valid and is to be loaded and executed, such that only the existing platform firmware data will be loaded and executed before the atomic operation is performed and only the updated platform firmware data will be loaded and executed after the atomic operation is performed (The reference teaches firmware IA-64 (Fig. 1) are redirected by modifying the driver interface 17 so that it is available for the new firmware diagnostic drivers (See Fig. 3, and text of col. 4: 42-59).*

As per Claim 2: Bramley shows the EFI in the memory performing the valid checking (see col. 2:5-21) for the interpreting limitation, “*The method of claim 1, further comprising performing an integrity check of the updated platform firmware data to verify that the updated platform firmware data is valid.*

As per Claim 3: Regarding limitation: *The method of claim 1, wherein the updated platform firmware data is written to the persistent firmware memory in a manner in which the updated platform firmware data is invisible to a firmware management system used to access firmware data stored on the persistent*

*firmware memory until the atomic modification of the firmware configuration data has been made; the copying of new diagnostic drivers shows it is not visible to any management, and the firmware are a number of discrete binary images, the copying of the new firmware into the unused location can be performed independently from a configuration (see col. 2: 20-58).*

As per Claim 4: Regarding limitation: *The method of claim 1, further comprising enabling a full recovery of the existing portion of platform firmware data that is to be updated during an upgrade process in response to a system anomaly that prevents completion of the upgrade process (See col. 2: 20-58).*

As per Claim 5: Regarding limitation: *The method of claim 1, further comprising deleting the at least a portion of existing platform firmware data after it has been upgraded.* Deletion is inherent too the firmware is no longer used.

As per Claim 8: Regarding limitation: *The method of claim 1, wherein the memory comprises a flash memory device (See the col. 1:15 'or flash memory').*

As per Claims 18-20: See rationale addressed to the rejection of Claims 1-5, 8 above.

#### ***Allowable Subject Matter***

5. Claims 9-17 and 21-29 are allowed.

#### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ted T. Vo whose telephone number is (571) 272-3706. The examiner can normally be reached on 8:00AM to 4:30PM.

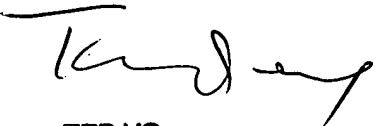
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708.

Art Unit: 2191

The facsimile number for the organization where this application or proceeding is assigned is the Central Facsimile number **571-273-8300**.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TTV  
January 05, 2007

  
\_\_\_\_\_  
TED VO

PRIMARY EXAMINER  
TECHNOLOGY CENTER 2100